

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RYAN KERWIN,)	
)	
Plaintiff)	Civil Action No. 05-0093E
)	
v.)	
)	
LT. WILLIAM McCONNELL,)	Judge Sean J. McLaughlin
)	
Defendant.)	Electronically Filed.

**DEFENDANT'S MOTION TO AMEND OR ALTER
JUDGMENT AND MOTION FOR A NEW TRIAL**

AND NOW, comes the Defendant by his attorneys, Douglas B. Barbour, Deputy Attorney General, Tracey Wilson, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully submits the following Motion to Amend or Alter Judgment and Motion for a New Trial pursuant to Fed. R. Civ. P. 59:

1. The defendant moves to have the judgment altered or amended in the form of a remittitur. Defendant requests that the award of compensatory damages be reduced to \$1 in light of the Prison Litigation Reform Act's requirement of actual injury for the recovery of compensatory damages.

2. Defendant further requests that the award of punitive damages be reduced to a lower amount not disproportionate to the fact that the injuries suffered are worthy of only nominal damages but commensurate with the purpose of punitive damages in deterring future wrongful conduct.

3. The defendant moves for a new trial based on the effect of two evidentiary rulings: the use during cross-examination of the deposition of Michael Malmeister and the introduction of Plaintiff's Cumulative Adjustment Record.

4. The defendant also moves for a new trial based on the verdict slip used at trial, which did not give the defendant the benefit of the burden shift announced in Rausser v. Horn, 241 F.3d 330 (3d Cir. 2001).

4. The defendant's supporting brief is hereby incorporated by reference.

WHEREFORE, it is respectfully requested that Defendant's Motion to Amend or Alter Judgment and Motion for a New Trial be granted, and that the award of damages be reduced and/or that a new trial be granted.

Respectfully submitted,

Thomas W. Corbett, Jr.,
Attorney General

By: /s/ Douglas B. Barbour
Douglas B. Barbour
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Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

Date: December 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Defendant's Motion to Amend or Alter Judgment and Motion for a New Trial** was electronically filed with the Court and served upon the following via first-class mail:

Ryan Kerwin
Kintoch Erie Community Correctional Facility
301 Erie Avenue
Philadelphia, PA 19124

/s/ Douglas B. Barbour
Douglas B. Barbour
Deputy Attorney General

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Date: December 7, 2007